

Circuit Court for Wicomico County
Case No. 22-C-15-001577 OT

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 0283

September Term, 2017

SANDRA K. WATSON

v.

THE BANK OF DELMARVA, ET AL.

Graeff,
Shaw Geter,
Thieme, Raymond G., Jr.
(Senior judge, specially assigned)

JJ.

Opinion by Thieme, J.

Filed: November 14, 2018

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

In this appeal, Sandra K. Watson, appellant, asserts that the Circuit Court for Wicomico County erred in granting summary judgment in favor of the Bank of Delmarva and Metropolitan Life Insurance Company (“MetLife”)¹, appellees. For the reasons set forth below, we conclude that there was no final judgment entered in the circuit court and, as a result, we are without jurisdiction to decide this appeal. Accordingly, the appeal shall be dismissed and remanded to the circuit court for further proceedings.²

PROCEDURAL BACKGROUND

On October 13, 2015, Sandra K. Watson (“Mrs. Watson”) filed a complaint in the Circuit Court for Wicomico County against her husband, Garfield Watson (“Mr. Watson”)³, the Bank of Delmarva, and MetLife. Thereafter, an amended complaint was filed against the same parties. The amended complaint involved a jointly owned annuity

¹ The annuity at issue in the instant case was issued by MetLife Investors USA Insurance Company. Subsequently, as a result of various mergers and acquisitions that are not relevant to this appeal, the annuity was acquired by a number of other entities. For our purposes, we shall refer to the company that issued the annuity and the various companies that held it as “MetLife.”

² Although our decision to dismiss this appeal is not based on these issues, we note that appellant failed to include in her brief citations to relevant portions of the record in support of many statements of fact. *See* Md. Rule 8-504(a)(4)(“Reference shall be made to the pages of the record extract supporting the assertions.”). With regard to the joint record extract, the parties failed to include a table of contents for pages 140 through 578. In addition, MetLife filed an appendix consisting of hundreds of pages of material, some of which was included in the joint record extract, and failed to provide a statement of explanation for the appendix as required by Md. Rule 8-501(e)(“the appellee may reproduce that part of the record as an appendix to the appellee’s brief together with a statement of the reasons for the additional part.”).

³ In its brief, MetLife asserts that “[o]n September 2, 2017, Appellant’s counsel stated that Mr. Watson passed away.”

that Mr. and Mrs. Watson purchased from MetLife in 2007 for \$400,000. Mrs. Watson alleged that Mr. Watson signed his name and forged her name on two withdrawal forms that he filed with MetLife. In response to the first of those forms, MetLife issued a check in the amount of \$150,000, payable in stacked format to Mr. and Mrs. Watson, such that the signature of only one of the payees was required to endorse the check. Mr. Watson deposited that check into the Watson's joint checking account at the Bank of Delmarva. In response to the second withdrawal form, MetLife made an electronic funds transfer ("EFT") in the amount of \$150,000, which was also deposited into the Watsons' joint checking account at the Bank of Delmarva. Mr. Watson withdrew from the joint checking account all of the money received from MetLife.

Mrs. Watson alleged that Mr. Watson committed fraud by forging her signature on the two applications for withdrawal of the annuity funds. She maintained that her forged signature varied from the name in which the annuity was established. She also alleged that MetLife breached the express and implied terms of the annuity contract and was negligent in accepting the withdrawal forms that contained her forged signatures. In addition, Mrs. Watson alleged breach of contract, negligence, and conversion against the Bank of Delmarva for accepting the check deposited by Mr. Watson, failing to ascertain the defective endorsement on it, and paying the \$150,000 check over a forged endorsement.

According to the docket entries, in June 2016, the Bank of Delmarva and MetLife filed motions for summary judgment. MetLife included a copy of its motion for summary judgment in the appendix to its brief, but the Bank of Delmarva's motion was not included in the joint record extract. According to the docket entries, a hearing on both motions was

held on July 20, 2016. Neither party included a transcript of that hearing in the record on appeal. *See* Maryland Rule 8-411. The docket entry for July 20, 2016 provides, in relevant part:

Defendant, Bank of Delmarva Motion for Summary Judgment; argued and held sub curia. Court will issue written opinion. Defendant Metlife’s Motion for Summary Judgment; argued and held sub curia. Court will issue written opinion.

The docket entries do not reflect that a written opinion was ever filed by the court nor is there any docket entry indicating that the court granted or denied either of the motions for summary judgment. In their joint record extract, however, the parties included two written orders, each bearing a date stamp indicating that it was filed with the “Clerk, Wicomico Co.” on July 20, 2016. One of those orders granted summary judgment in favor of MetLife and the other granted summary judgment in favor of the Bank of Delmarva. Neither of those orders was included on the docket.

On January 4, 2017, a jury trial was held. The record before us does not include a transcript of that trial, but a verdict sheet indicates that the jury awarded \$451,710.52 in economic damages and \$677,565 in emotional distress damages against Mr. Watson and in favor of Mrs. Watson. On March 30, 2017, the circuit court granted summary judgment against Mr. Watson and in favor of Mrs. Watson and entered an “Order of Judgment” that provided:

This case comes before the Court on January 4, 2017, the date set for trial with a pending Motion for Final Judgment based on a prior Order of Judgment. The Defendant Garfield R. Watson after call by Court and search by the Sheriff did not appear. Liability as alleged was found and a jury impaneled on the issue of damages. The jury having reached its verdict, it is

by the Circuit Court of Wicomico County, Maryland, this 30th day of March, 2017,

ORDERED judgment in favor of Sandra K. Watson and against Garfield R. Watson in the amount of \$1,129,275.52 of which \$451,710.52 was determined as economic damage and \$677,565.00 was determined as pain and suffering is entered hereby.

The “Order of Judgment” did not include any mention of the summary judgment motions filed by the Bank of Delmarva or MetLife or an entry of judgment in favor of either of those entities.

DISCUSSION

Generally, only final judgments are appealable. Md. Code (2013 Repl. Vol.), § 12-301 of the Courts and Judicial Proceedings Article (“CJP”). In *URS Corp. v. Fort Myer Constr. Corp.*, the Court of Appeals explained that:

[u]nder our rules and case law, a final judgment exists only when the trial court intends an “unqualified, final disposition of the matter of the controversy” that completely adjudicates all claims against all parties in the suit, and only when the trial court has followed certain procedural steps when entering a judgment in the record.

452 Md. 48, 65 (2017)(citing *Waterkeeper Alliance, Inc. v. Maryland Dept. of Agriculture*, 439 Md. 262, 278-79 (2014)). Whether a judgment is final “is a question of law to be reviewed *de novo*.” *Baltimore Home Alliance, LLC v. Geesing*, 218 Md. App. 375, 381 (2014).

Maryland Rule 8-202 provides that a “notice of appeal shall be filed within 30 days after entry of the judgment or order from which the appeal is taken.” Md. Rule 8-202(a). The date of entry of a judgment “occurs on the day when the clerk of the lower court enters a record on the docket of the electronic case management system used by that court.” Md.

Rule 8-202(f). It is not the date that the trial judge signs an order, nor is it the time-stamp date that is placed upon the order when it is filed with the clerk’s office, that controls the deadline for filing an appeal. Rather, the date of the judgment is the actual date on which the judgment is entered on the docket, and it is that date that begins the 30 day period for filing a notice of appeal. *See Martino v. Arfaa*, 169 Md. App. 692, 701 (2006), *aff’d*, 404 Md. 364 (2008).

One of the procedural steps for entry of a final judgment is the “separate document requirement,” which is set forth in Maryland Rule 2-601. This rule requires a trial court to memorialize a judgment in a separate document that is signed by either the court clerk or the judge and entered on the docket.⁴ Rule 2-601 provides, in part:

(a) **Separate Document – Prompt Entry.** (1) Each judgment shall be set forth on a separate document and include a statement of an allowance of costs as determined in conformance with Rule 2-603.

⁴ Maryland’s separate document requirement is based upon a similar requirement in Rule 58(b) of the Federal Rules of Civil Procedure, which provides:

(b) **Entering Judgment.**

(1) ***Without the Court’s Direction.*** Subject to Rule 54(b) and unless the court orders otherwise, the clerk must, without awaiting the court’s direction, promptly prepare, sign, and enter the judgment when:

- (A) the jury returns a general verdict;
- (B) the court awards only costs or a sum certain; or
- (C) the court denies all relief.

(2) ***Court’s Approval Required.*** Subject to Rule 54(b), the court must promptly approve the form of the judgment, which the clerk must promptly enter, when:

- (A) the jury returns a special verdict or a general verdict with answers to written questions; or
- (B) the court grants other relief not described in this subdivision (b).

Fed. R. Civ. P. 58(b). *See also Hiob v. Progressive American Ins. Co.*, 440 Md. 466, 473 (2014)(discussing the history of Maryland Rule 2-601).

(2) Upon a verdict of a jury or a decision by the court allowing recovery only of costs or a specified amount of money or denying all relief, the clerk shall forthwith prepare, sign, and enter the judgment, unless the court orders otherwise.

(3) Upon a verdict of a jury or a decision by the court granting other relief, the court shall promptly review the form of the judgment presented and, if approved, sign it, and the clerk shall forthwith enter the judgment as approved and signed.

(4) A judgment is effective only when so set forth and when entered as provided in section (b) of this Rule.

* * *

(b) Applicability – Method of Entry – Availability to the Public.

(1) Applicability. Section (b) of this Rule applies to judgments entered on and after July 1, 2015.

(2) *Entry.* The clerk shall enter a judgment by making an entry of it on the docket of the electronic case management system used by that court along with such description of the judgment as the clerk deems appropriate.

(3) Availability to the Public. Unless shielding is required by law or court order, the docket entry and the date of the entry shall be available to the public through the case search feature on the Judiciary website and in accordance with Rules 16-902 and 16-903.

(c) Recording and indexing. Promptly after entry, the clerk shall (1) record and index the judgment, except a judgment denying all relief without costs, in the judgment records of the court and (2) note on the docket the date the clerk sent copies of the judgment in accordance with Rule 1-324.

(d) Date of Judgment. On and after July 1, 2015, regardless of the date a judgment was signed, the date of the judgment is the date that the clerk enters the judgment on the electronic case management system docket in accordance with section (b) of this Rule. The date of a judgment entered prior to July 1, 2015 is computed in accordance with the Rules in effect when the judgment was entered.

The purpose of the separate document requirement is to eliminate confusion about when a judgment is entered and the date from which the deadline for filing an appeal is computed. *Hiob v. Progressive American Ins. Co.*, 440 Md. 466 475-76 (2014). In addition, Maryland’s appellate courts have repeatedly stated that the value of docket entries

making public the disposition of each claim in a case “cannot be overemphasized.” *Mateen v. Saar*, 376 Md. 385, 396 (2003). Litigants and the public ought to be able to look at a case file or docket and determine when any judgment was entered. *See Davis v. Davis*, 335 Md. 699, 716-17 (1994).

There are certain circumstances under which the separate document requirement of Rule 2-601(a) may be waived in order to preserve an appeal, rather than eliminate it as untimely. *See URS Corp.*, 452 Md. at 53 (“Because the separate document requirement is intended to clarify the deadline for filing an appeal – not to create delay for its own sake – the separate document requirement may be waived when waiver does not prejudice appeal rights.”). In *Women First OB/GYN Assocs., LLC v. Harris*, we explained that:

when there is a docket entry of the court’s ruling; the court’s failure to memorialize its ruling in a separate document was inadvertent; the parties have not objected to the fact that a separate document was not prepared; and remanding the case merely for the court to prepare and enter the document would accomplish nothing but delay, waiver is appropriate.

232 Md. App. 647, 682, *cert. denied*, 456 Md. 73 (2017).

In the instant case, it is not just the separate document required under Rule 2-601(a) that is missing. The only docket entry addressing the summary judgment motions indicates that the court held both motions *sub curia* and that a written opinion would follow. Although the Bank of Delmarva and MetLife have provided copies of orders they claim show the court granted summary judgment in their favors, those orders were not entered on the docket and there is no other entry on the docket indicating the court’s intention to grant those motions.

The instant case is similar to *Taha v. Southern Management Corp.*, 367 Md. 564, 569 (2002). In that case, Taha, a maintenance technician at an apartment complex managed by Southern Management Corporation (“SMC”) was terminated from his employment. *Id.* at 566. Shortly after Taha was terminated, SMC’s property manager was notified that certain items were missing from a locked maintenance tool and supply area at the apartment complex where Taha had worked. *Id.* After a police investigation, Taha was arrested and charged with attempted second-degree burglary and breaking and entering a dwelling or storehouse. *Id.* Ultimately, the State entered a *nolle prosequi* to those charges. *Id.*

Thereafter, Taha filed a complaint against SMC and two of its employees alleging, among other things, malicious prosecution. *Id.* After a jury trial, verdicts were returned in favor of the two employees and against SMC. *Id.* The jury awarded Taha economic, non-economic, and punitive damages from SMC. *Id.* The judgment order entered following the jury trial referenced the verdict and damages against SMC, but failed to include any reference to the judgments in favor of the two employees. *Id.* Nor was there any entry on the docket that referenced the verdicts or judgment orders in favor of the employees. *Id.* at 567.

SMC noted an appeal. *Id.* The Court of Appeals granted a petition for writ of certiorari, but ultimately dismissed the appeal because final appealable judgments had not been entered in the circuit court as to the individual employees. *Id.* at 567. Although the Court recognized that parties may waive the separate document requirement set forth in Rule 2-601, it noted that such a waiver is appropriate only “where application of the waiver doctrine preserved the right to appeal, where none of the parties raised any objection, and

where final judgment was entered on the docket.” *Id.* at 569 (relying on *Suburban Hosp. Inc. v. Kirson*, 362 Md. 140, 157 (2000)). SMC argued that an oral statement by the trial judge at a hearing on a post-trial motion indicated the court’s understanding that a final judgment had been entered against Taha and in favor of the two employees, but the Court of Appeals rejected that argument on the ground that an oral comment by a trial judge contained in the record is insufficient to create a final judgment. *Id.* at 570. The Court went on to conclude that because the verdicts in favor of the two individual employees were “not covered by docket entries and separate documents as required by Rule 2-601[.]” no final and appealable judgments had been entered and the Court was without authority to entertain the appeal. *Id.* at 571.

The same is true in the case at hand. The only verdict entered on the docket was against Mr. Watson. There are no docket entries and no separate documents indicating a final judgment as to the Bank of Delmarva and MetLife. The orders included in the joint record extract were never entered on the docket. As a result, no final judgment has been entered and we are without authority to entertain this appeal.

**APPEAL DISMISSED; CASE REMANDED
TO THE CIRCUIT COURT FOR
WICOMICO COUNTY; COSTS TO BE
PAID BY APPELLANT.**